

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ABBAS R. MOBINE,

CASE NO. 11-cv-2550 – IEG (BGS)

**Plaintiff,**

vs.

ONEWEST BANK, FSB, a California  
Banking Association; INDYMAC  
MORTGAGE SERVICES, a division of  
OneWest Bank, FSB; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEM,  
INC., a Delaware Corporation; ALL  
PERSONS UNKNOWN CLAIMING ANY  
LEGAL OR EQUITABLE RIGHT, TITLE,  
ESTATE, LIEN, OR INTEREST IN THE  
PROPERTY DESCRIBED IN THE  
COMPLAINT ADVERSE TO PLAINTIFF'S  
TITLE, OR ANY CLOUD ON PLAINTIFF;  
and DOES 1 through 100.

**ORDER GRANTING ONEWEST  
BANK'S MOTION TO DISMISS  
FIRST AMENDED COMPLAINT  
[Doc. No. 3].**

## Defendants.

Presently before the Court is Defendant OneWest Bank, FSB’s motion to dismiss Plaintiff’s First Amended Complaint. Plaintiff did not file an opposition. Having considered the Defendant’s arguments, and for the reasons set forth below, the Court **GRANTS** the motion to dismiss and **DISMISSES** Plaintiff’s claims against OneWest.<sup>1</sup>

<sup>1</sup>Plaintiff also names IndyMac Mortgage Service, which is a division of OneWest Bank and not a separate entity.

## Background

2 The factual background of the case was fully set forth in the Court’s January 24, 2012  
3 order and will not be repeated herein. The Court granted Defendants’ motion to dismiss the  
4 original complaint, dismissing with prejudice Plaintiff’s claims against Defendant Mortgage  
5 Electronic Registration System (“MERS”) as well as Plaintiff’s claims for fraud and violation of  
6 the Truth in Lending Act. [Doc. No. 8, p. 12.] The Court also dismissed with leave to amend  
7 Plaintiff’s claims for violations of the Real Estate Settlement Procedures Act (“RESPA”), unjust  
8 enrichment, and unfair business practices.

9 Plaintiff filed a First Amended Complaint (“FAC”) on February 14, 2012. Defendant  
10 OneWest now moves to dismiss the FAC.

### **Legal Standard**

12 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests  
13 the legal sufficiency of the pleadings. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “To  
14 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to  
15 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949  
16 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “The plausibility standard  
17 is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a  
18 defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a  
19 defendant’s liability, it ‘stops short of the line between possibility and plausibility of “entitlement  
20 to relief.”’” *Id.* (internal citation omitted). “Dismissal can be based on the lack of a cognizable  
21 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri  
22 v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

23 In ruling on a motion to dismiss, the court must “accept all factual allegations in the  
24 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.”  
25 *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). The court, however, need not accept “legal  
26 conclusions” as true. *Iqbal*, 129 S. Ct. at 1949. Thus, “a formulaic recitation of the elements of a  
27 cause of action will not do.” *Twombly*, 550 U.S. at 555. It is also improper for the court to assume  
28 that plaintiff “can prove facts that it has not alleged.” *Associated Gen. Contractors of Cal., Inc. v.*

1 *Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). On the other hand, “[w]hen there are  
 2 well-pleaded factual allegations, a court should assume their veracity and then determine whether  
 3 they plausibly give rise to an entitlement to relief.” *Iqbal*, 129 S. Ct. at 1950.

4 **Discussion**

5 Defendant moves to dismiss the FAC, arguing Plaintiff failed to cure the deficiencies noted  
 6 in the Court’s order dismissing the original complaint.

7 **I. RESPA**

8 The Court dismissed all of Plaintiff’s claims against OneWest as set forth in the original  
 9 complaint insofar as they were premised on acts or omissions of La Jolla Bank. [Doc. No. 8, pp.  
 10 6-7.] The Court also found Plaintiff’s remaining RESPA allegations to be purely conclusory, as  
 11 Plaintiff stated only that OneWest accepted charges other than for services actually performed.  
 12 [Doc. No. 8, p. 10.] In the FAC, Plaintiff alleges Defendants breached their duties under RESPA  
 13 by failing to timely respond to written inquiries regarding loan origination documents, failing to  
 14 make required disclosures, and failing to exercise due diligence in attempting to contact Plaintiff  
 15 and assist him with the loan modification.

16 To the extent Plaintiff again attempts to assert claims under RESPA against OneWest  
 17 based upon the failure to provide origination documents, such claims are barred because OneWest  
 18 did not take on the liabilities associated with borrower claims against La Jolla Bank as explained  
 19 in the Court’s order dismissing the original complaint. [Doc. No. 8, pp. 5-7.] In addition,  
 20 Plaintiff’s claim that OneWest failed to provide him with a “Mortgage Servicing Transfer  
 21 Disclosure” [FAC, ¶ 153(b)] lacks merit, because Plaintiff admits he received that document.  
 22 [FAC, ¶ 124.]

23 OneWest’s alleged lack of communication regarding the loan modification also does not  
 24 violate RESPA. Under 12 U.S.C. § 2605(e), a loan servicer has a duty to respond within 60 days  
 25 to a Qualified Written Request (“QWR”) from the borrower for information relating to the  
 26 servicing of such loan. The QWR must contain a statement of the reasons the borrow believes the  
 27 account is in error or provide sufficient detail to the servicer regarding what other information is  
 28 sought. *Id.* Here, Plaintiff alleges he sent numerous QWRs to OneWest for loan origination

1 documents, but does not provide copies of any of those letters or the dates on which they were  
 2 sent. [FAC, ¶¶ 145-148.] Plaintiff states in his FAC that he in fact received such documents.  
 3 [FAC, ¶ 148.]

4 Plaintiff does not allege any of his written requests related to the loan modification. Even  
 5 if Plaintiff made inquiries of OneWest employees in writing regarding the loan modification, those  
 6 inquiries were not related to the servicing of his loan so as to fall within the scope of RESPA's  
 7 timely response requirements. *Saucedo v. Bank of America*, 2011 WL 6014008, \*2 (D. Or. Dec. 1,  
 8 2011) (citing *Consumer Solutions REO, LLC v. Hillery*, 658 F. Supp. 2d 1002, 1014 (N.D. Cal.  
 9 2009) (noting that the statute defines "servicing" to mean related to the receipt of scheduled  
 10 periodic payments of principal and interest)).

11 Finally, "[a] claim under RESPA for failure to respond to QWRs requires a showing that  
 12 the violation proximately caused the plaintiff's damages." *Frison v. WMC Mortgage Corp.*, 2011  
 13 WL 4571753, \*4 (S.D. Cal. Sept. 30, 2011). Plaintiff alleges he was ultimately forced into selling  
 14 the house of his dreams as a result of Defendants' unscrupulous lending practices. [FAC, ¶ 155.]  
 15 However, Plaintiff lost his home because OneWest was unable to modify his large outstanding  
 16 loan, not because of any particular failure by OneWest to respond to a QWR. Plaintiff has not  
 17 alleged any injury proximately caused by OneWest's alleged failure to communicate on the loan  
 18 modification.

19 Having again failed to set forth facts to support his RESPA claim against OneWest, the  
 20 Court DISMISSES such claim WITH PREJUDICE.

21 2. *Unfair Business Practices*

22 Plaintiff's unfair business practices claim under Cal. Bus. & Prof. Code § 17200 is  
 23 predicated on Defendants' failure to comply with consumer statutory protections under RESPA  
 24 and the California Commercial Code. [FAC, ¶¶ 160-163.] Plaintiff's FAC fails to state a valid  
 25 RESPA claim, and Cal. Comm. Code §§ 3301 *et seq* does not govern non-judicial foreclosure.  
 26 *Castaneda v. Saxon Mortgage Servs., Inc.*, 687 F. Supp. 2d 1191, 1201 (E. D. Cal. 2009).  
 27 Therefore, the Court DISMISSES Plaintiff's unfair business practices claim WITH PREJUDICE.  
 28

### 3. *Unjust Enrichment*

2 Plaintiff again includes a separate cause of action for unjust enrichment. However,  
3 California law entitles a party to the equitable remedy of unjust enrichment only as restitution for  
4 an underlying claim, and not as an independent cause of action. *Levine v. Blue Shield of*  
5 *California*, 189 Cal. App. 4<sup>th</sup> 1117, 1138 (2010). As noted by the Court in its order on  
6 Defendants' motion to dismiss the original complaint, the judicially noticeable documents  
7 establish that OneWest was entitled to collect Plaintiff's monthly payments. [Doc. 8, pp. 10-11.]  
8 There is nothing fundamentally unjust about Plaintiff paying, and OneWest retaining, monies due  
9 on the loan. To the extent Plaintiff attempts to create an issue in the FAC as to OneWest's standing  
10 to collect payments on the loan as a result of the securitization process [FAC, ¶¶ 81-103.], courts  
11 have uniformly held that whether a loan is securitized has no bearing on a party's standing on a  
12 party's interest in a loan. *Bascos v. Fed. Home Loan Mortgage Corp.*, 2011 WL 3157063, \*6  
13 (C.D. Cal. July 22, 2011) (discussing cases holding that a borrower does not have standing to  
14 challenge the validity of the securitization of the loan based upon its reassignment or sale).  
15 Therefore, the Court DISMISSES such claim WITH PREJUDICE.

## *Conclusion*

17 For the reasons set forth herein, the Court GRANTS Defendant OneWest's motion to  
18 dismiss the FAC. Plaintiff's claims against OneWest are DISMISSED with prejudice and without  
19 leave to further amend. The Clerk is directed to close the case.

20 || IT IS SO ORDERED.

21 || DATED: April 27, 2012

Irma E. Gonzalez  
IRMA E. GONZALEZ, Chief Judge  
United States District Court